

**MINUTES  
of the  
FIRST MEETING  
of the  
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**May 30, 2013  
Room 322, State Capitol  
Santa Fe**

The first meeting of the 2013 interim of the Legislative Health and Human Services Committee (LHHS) was called to order by Representative James Roger Madalena, chair, on Thursday, May 30, 2013, in Room 322, State Capitol in Santa Fe, New Mexico.

**Present**

Rep. James Roger Madalena, Chair  
Sen. Gerald Ortiz y Pino, Vice Chair  
Rep. Doreen Y. Gallegos  
Sen. Gay G. Kernan  
Sen. Mark Moores  
Sen. Benny Shendo, Jr.

**Absent**

Rep. Nora Espinoza  
Rep. Terry H. McMillan

**Advisory Members**

Rep. Phillip M. Archuleta  
Sen. Craig W. Brandt  
Sen. Jacob R. Candelaria  
Rep. Stephen Easley  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto  
Sen. Linda M. Lopez  
Sen. Cisco McSorley  
Sen. Bill B. O'Neill  
Sen. Nancy Rodriguez  
Rep. Edward C. Sandoval  
Sen. William P. Soules  
Rep. Elizabeth "Liz" Thomson

Sen. Sue Wilson Beffort  
Rep. Nathan "Nate" Cote  
Rep. Sandra D. Jeff  
Rep. Paul A. Pacheco  
Sen. Mary Kay Papen  
Sen. Sander Rue  
Sen. Lisa A. Torracco

**Guest Legislators**

Rep. Ernest H. Chavez  
Sen. Carlos R. Cisneros  
Sen. Stuart Ingle  
Rep. W. Ken Martinez

**Staff**

Michael Hely, Staff Attorney, Legislative Council Service (LCS)  
Rebecca L. Griego, Records Officer, LCS  
John M. Butrick, Law School Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file, including those from the public comment period.

**Thursday, May 30****Call to Order**

Representative Madalena called the meeting to order at 9:30 a.m.

**Introductions**

The chair asked the LHHS members and staff to introduce themselves.

**Interim Committee Procedures**

Upon the request of the chair, John Yaeger, assistant director for legislative affairs, LCS, provided a presentation on interim committee procedures. Mr. Yaeger presented the tentative interim calendar and explained the "blocking provision". A quorum will be five members of the committee. Committees meet in the State Capitol after September 30 unless otherwise agreed upon with the New Mexico Legislative Council. Members were asked to provide their preferred methods of contact and communication with the LCS. Mr. Yaeger also provided the following guidance on procedure:

- advisory members serve as nonvoting members of the committee;
- generally, a good deal of action by a committee can be done by consensus, e.g., a letter requesting information or drafting a letter by LCS staff for committee review;
- however, formal action should be made upon a motion and then a vote of the voting members with a quorum present. Examples of formal actions include endorsement of legislation; issuance of a letter reflecting the committee's opinion, concern or other statement; or the creation of a subcommittee. The vote can be made by voice, by a show of hands or even by the chair asking whether there is any objection to the motion. A formal calling of the roll is not always necessary; and
- if a quorum is not present, the members present cannot act formally as a committee, but they can operate as a subcommittee to take testimony, but not to take formal action, if the number of voting members present plus advisory members present plus legislators attending the meeting as one of their extra days present equals five. (Council Policy No. 3 (B)).

## **2013 Legislative Highlights**

The chair asked the committee lead staff, Mr. Hely, to present the 2013 legislative highlights to the committee. (Please see the "highlights" handout for the legislation endorsed by the LHHS and its subcommittees and passed during the 2013 session.) Funding measures that were incorporated into the budget were also discussed.

Members of the committee voiced several questions and concerns. A member asked whether, and received confirmation that, the secretary of human services is among the governor's appointees to the board of directors of the New Mexico Health Insurance Exchange (HIX). Another member asked that the LCS provide the members with a list of bills that were vetoed last session and, thus, will be germane in the 2014 session. Mr. Hely agreed to present a list of the vetoed legislation related to health and human services at a subsequent committee meeting.

## **The Effect of Federal "Sequestration" on New Mexico's Health Care Services and Infrastructure**

The chair requested Ruby Ann Esquibel of the Legislative Finance Committee (LFC) to present issues related to the federal budgetary cuts known as "sequestration". Sequestration has three parts: national, macro state-level concerns and specific effects to health and human services programs. The economy and health service provisions are stabilized but not robust, according to Ms. Esquibel. Please see the sequestration handout for a more detailed description of sequestration issues, including statistics and exemptions as discussed by Ms. Esquibel.

Ms. Esquibel recommended that the legislature consider many contingencies as discussed in the portion of the handout relating to states' economies. The estimate on page 13 of the handout is a low, conservative number. The committee members had several questions and concerns.

Ms. Esquibel explained that reductions breakdowns were accessible online. The "deal" discussed on page 7 of the handout was still pending as of February 2013.

One member was concerned about leasing revenues and the resulting yet undetermined effects on schools.

Another member asked about transfer authority from page 10 of the handout and requested that these numbers be updated periodically so that the LHHS can provide other members the best recommendations.

One member had a question about the impact on the Supplemental Nutritional Assistance Program, or "SNAP", and the fiscal impact the program would have on the state. The impacts are as yet unknown as there is a lot of variance between the different models provided today.

Another member was concerned about the impact of payroll taxes and how that will affect gross receipts tax and economic spending. This member was also concerned about the effect that

sequestration would have on health safety nets and encouraged members to develop some finance initiatives.

One member was concerned about the effect on Medicaid dollars coming to the state and the lack of specific numbers. Specifically, this member was concerned about the effect on Native Americans.

Another member asked about the cost and availability of cancer drugs after sequestration.

### **Public Comment**

Richard Mason, New Mexico Alliance of Health Councils and co-chair of the Sandoval County Health Council, provided a handout and urged that assessing New Mexico's health needs be a key function of these councils. Mr. Mason said that the LHHS should consider this during the interim and urged greater funding of the councils from the legislature.

Rick Vigil with the New Mexico Local Collaborative Alliance addressed behavioral health issues and previous legislation introduced addressing these issues. Mr. Vigil requested a study on the impacts of and how to address behavioral health services and cautioned that expenses will increase exponentially over time if these issues are not addressed. Mr. Vigil referred members to his group's web site and requested a \$195,000 appropriation for these purposes. One member commented that a memorial was passed in the 2013 legislative session regarding this issue. Another member commented that he would be glad to meet with Mr. Vigil regarding setting up the infrastructure.

Tina Olsen, New Mexico Citizens' Commission on Human Rights, mentioned Senate Memorial 44 from the 2013 session, which requests that the LHHS study the incidence and effects of overmedicating children. Ms. Olsen addressed the desire to have a balanced life without the need of physical or medication aids, specifically antidepressants.

Susan Loubet, New Mexico Women's Agenda, addressed Senate Bill (SB) 43 from the 2013 session regarding treatment for pregnant women who are substance abusers and urged the committee to coordinate with the governor so that any similar bill passed in the future would not be pocket-vetoed, as SB 43 was. Ms. Loubet also addressed the new \$100 million appropriation to the Temporary Assistance for Needy Families (TANF) Program and asked that the public be informed about how the appropriation will be used and how it is proceeding.

Elisa Martinez, Project Defending Life, provided a handout. Ms. Martinez discussed what she alleged to be 14 cases of serious and life-threatening injuries arising from care received in abortion clinics. Ms. Martinez stated that the Department of Health has no jurisdiction in doctor-operated abortion clinics. According to Ms. Martinez, abortion clinics are not inspected or subjected to any standards of care or regulation, leading to a setting where anything goes. Abortion doctors operate under a physician's license and as a regular doctor's office, according to Ms. Martinez. Classification as an ambulatory service center would be better because that would

provide a better structure and regulatory control. Ms. Martinez also stated that there is currently an unprecedented abortion epidemic — specifically, viable babies have been born and then killed. A late-term abortion fails 13% of the time, and the baby is born alive, according to Ms. Martinez. The concern is what is happening after the baby is born. The time frame for viable babies is 20 weeks to 22 weeks, but abortions are performed up to the time of live birth today in New Mexico. Ms. Martinez asked the committee to consider placing restrictions on these abortions.

Tara Shaver of Project Defending Life continued the discussion begun by Ms. Martinez. Ms. Shaver commented that 80% of New Mexicans oppose late-term abortions. She stated that an Albuquerque clinic performing these abortions is attracting people from all around the country. Late-term abortions are a three-day procedure that begins with a heartbeat check of the baby, cervix dilation on the second day and birthing the baby (assumed dead at this point) on the third day, according to Ms. Shaver. Ms. Shaver stated that her end goal is to protect women. Please refer to the handouts distributed to members by Ms. Martinez and Ms. Shaver.

One member commented that the abortion issue is more complicated than what was presented by Ms. Shaver and Ms. Martinez.

Pamela Blackwell of Health Action New Mexico addressed oral health access through dental therapists. Ms. Blackwell would like the opportunity to present her group's data to this interim committee and to regular standing committees during the 2014 session.

Dave Smith of the Drug Policy Alliance of New Mexico provided a handout to committee members. Mr. Smith addressed the need to treat drug violators instead of incarcerating them. Mr. Smith also spoke about pre-booking of those arrested if in possession of illegal drugs, and he requested an appropriation from the legislature to help implement the program. He raised concerns about drug overdose deaths, especially in rural areas. Tax credits for an opium-replacement drug are a good idea, according to Mr. Smith, and the tax credit needs to be increased.

Ruth Hoffman with Lutheran Ministries addressed SNAP concerns and the federal farm bill. Ms. Hoffman discussed the food stamp provisions from the farm bill and the need to have a conversation on hunger in New Mexico. Also of concern to Ms. Hoffman was TANF assistance reductions and transitional employment programs no longer under TANF.

Bill Jordan with New Mexico Voices for Children stated that the needs of struggling families must be discussed, as the state has one of highest rates of poverty in the nation. According to Mr. Jordan, New Mexico cut higher education more than any other state in the last five years, yet tuition costs are have risen 14%. Also of concern is the child care waiting list. Mr. Jordan was particularly concerned about families not receiving assistance because they earn just above the federal poverty line, and he admonished the LHHS because the legislature had not fulfilled previously made promises.

Jeremy Rutherford, March of Dimes, asked the committee to add a new screening to prenatal screening for congenital heart disease using noninvasive procedures. The new screening improves all outcomes and costs only \$5.00 to \$10.00 per person. Please see Mr. Rutherford's handout for more information.

### **Early Childhood Services**

Mimi Aledo-Sandoval and Charles Sallee of the LFC gave a presentation on early childhood services. Please see the handout provided. The discussion focused on the importance of starting early with childhood services, with New Mexico ranking next-to-worst in child well-being. Also discussed were barriers to educational achievement and adverse childhood experiences and the effect that this adversity has on a child's development during the first three years of life. This should be a legislative priority according to the presenters.

Mr. Sallee discussed cost-benefit analysis, research needs and oversight authority of the new statewide program to provide early childhood home visiting services. Mr. Sallee stated that further analysis is available and can be provided if the legislators request it. New Mexico Results First and Head Start were two programs discussed by Mr. Sallee. He mentioned the cost per child, \$142,726, when children are removed from the home and adopted.

One committee member asked whether there is a report showing better outcomes and whether Head Start shows these outcomes. Having high-quality teachers in place should be a priority, according to the member. The member also was concerned about losing quality providers because of the more stringent regulations and rules rather than focusing on quality foster parents before thinking about regulating them. The presenters stated that the focus is more on a child's development and outcomes.

When asked about state funding for home visiting services, Mr. Sallee stated that most home visiting services are funded through the state general fund and that the federal government provides a little funding. He stated that in the 2013 regular session, the legislature appropriated \$550,000 in House Bill 2 to home visiting programming, but Governor Martinez exercised a line-item veto to remove this funding.

When asked about the effectiveness of pre-kindergarten or "pre-K" programs, Mr. Sallee mentioned a 2012 LFC report that shows better outcomes for children who had attended pre-K programs than for those who had not.

Mr. Sallee stated that the cost of providing child care may exceed the state subsidy at some facilities. The Children, Youth and Families Department is currently looking at costs regionally to ensure adequate reimbursement for facilities. A committee member requested a follow-up presentation regarding child care providers.

Another member asked whether any bills were offered last year for this issue (Senator John M. Sapien and Representative Larry A. Larrañaga each had one, as did Senator Ortiz y Pino,

along with a \$26 million to \$30 million increase in funding per year). New revenue estimates will be available in August. Also discussed was the effect of sequestration (see earlier handout) on single-parent homes and protective services.

One committee member was concerned that 71% of births in the state are being financed by Medicaid.

A member asked whether there was any work being done to prevent teen pregnancy statewide, mentioning the success of some programs that, however, are not statewide.

Mr. Sallee mentioned the question that some policymakers have asked, which is whether Medicaid managed care organizations (MCOs) should be required to provide home visiting services. He mentioned that new federal waivers may allow Medicaid dollars to be used in this way. MCOs do some intensive home visiting now. He stated that Secretary of Human Services Sidonie Squier has stated that a policy goal should be to tackle single parenthood.

One member requested further information on the effect of federal sequestration on the Head Start and Women, Infants, and Children programs.

There was a discussion of the lack of access to prenatal care for women in the state.

A committee member made favorable mention of St. Joseph Community Health's First Born home visiting program, which employs 46 home visiting professionals in central New Mexico.

A member asked whether Family Infant Toddler (FIT) programs are still working for children at risk in New Mexico. Rachel Gudgel of the LFC stated that every school that applied for FIT funding received it for fiscal year 2014. The member stated her concern about those schools that do not apply.

### **New Mexico Health Insurance Exchange Board**

Gabriel Parra, member, HIX board of directors, provided an update on the HIX. The board is looking at a hybrid exchange model, whereby the state creates its own small business exchange and the federal government will provide the information technology (IT) infrastructure for the state's individual market HIX. This process has begun. Funding issues were also discussed, and much of what has been appropriated has not yet been spent but will likely go toward outreach and marketing programs. The next board meeting is Friday, June 7. Mr. Parra stated that the goal is to have the HIX web site up and running to accept enrollment applications for coverage by October 1 of this year. By January 1, 2014, the HIX is supposed to be fully functioning, with a single HIX "face" providing access to both the federally operated individual HIX and the state-operated small business HIX. By January 1, 2015, the HIX will cease to partner with the federal government for individual market functions, and the state will perform all functions. Please see the one-page handout for more details, including highlights of the system as it is now.

Several committee members had questions and concerns. One member asked how and the degree to which the HIX infrastructure would be integrated with Medicaid users, which has not yet been determined. This member was also concerned about voter registration and social service program accessibility.

Mr. Parra also stated that a flow chart will provide the user with a road map with a single point of entry. The impact on the high-risk pool population was undetermined. The hybrid system will likely operate for one year. Approximately 35 states will have exchanges up and running within the next few months. The federal government charges a 3.5% premium fee for using the federal IT system. The contract is not finalized but will be available for review.

Another committee member was concerned that it would be hard to get so many agencies to work in one direction, given the fast track nature of this HIX.

Mr. Parra stated that the HIX is not authorized to exclude plans, with that decision left to the Insurance Division of the Public Regulation Commission. As long as a plan meets the federal Patient Protection and Affordable Care Act (PPACA) requirements, that plan may participate. Specific programs for specific populations can be provided so that as many programs as possible are provided and are competing for the applicant. Moreover, catastrophic coverage is allowed under the federal HIX. Mr. Hely explained that these catastrophic plans are only available for individuals under 30 years of age.

One LHHS member asked how the HIX can help the implementation and expediting of Medicaid claims. This is still unclear. This LHHS member stated that transition concerns and the availability of safety nets are an issue, given that big health problems (like congestive heart failure) could occur during this transition time.

Mr. Parra stated that this is why enrollment will begin in October — so that applicants can know and have some understanding as to what coverage they are eligible for by January. This transition time also allows applicants to more easily migrate to the new coverage plan between October and January.

Mr. Parra also stated that the Insurance Division is authorized to certify plans as qualified health plans, and any appellate process would be determined through rules that are written by the board. Further, the board can reevaluate and grade available plans.

One LHHS member asked about tribal enrollment and availability concerns. Specifically, this member was concerned about resolving definition differences between the HIX and the federal Internal Revenue Service.

Another member was concerned that many more people are looking for coverage than in the past. Mr. Parra stated that applicants cannot be denied coverage after January 1. The high-risk



pool needs to be discontinued, and individuals in that pool need to be covered by the HIX, according to Mr. Parra.

One LHHS member asked about the amount of outreach to Native Americans. Mr. Parra stated that the board is accepting public input and looking at a program to reach all populations throughout the state.

A member stressed the importance of the HIX having an ombudsman role and a legislative liaison. Mr. Parra stated that he would discuss this with HIX Chief Executive Officer Mike Nuñez.

One member asked what will happen if the superintendent of insurance has determined that a plan will be certified as a qualified health plan (QHP) to be offered on the HIX, but the plan does not meet the requirements for a QHP under federal or state law. Further, the member asked about what would happen if the QHP were performing poorly and about how QHPs would be rated.

A member stated the need for clarity on the future of the New Mexico Medical Insurance Pool. Mr. Parra stated that the federal high-risk pool would cease to offer coverage as of January 1, 2014 and that those individuals would be forced to seek coverage on the HIX or elsewhere.

A committee member asked whether outreach for the HIX would be offered in Diné and other languages spoken in New Mexico. Mr. Parra said that the HIX would seek to cover the state's population and provide linguistically appropriate services.

### **LHHS Interim Work Plan Review and Adoption**

Representative Madalena asked Mr. Hely to present the 2013 LHHS work plan for review and adoption by the committee. The work plan includes comments that the LCS staff received from members and the public. The LCS staff will also respond to public comment from the morning. Please see Mr. Hely's handout.

Several LHHS members had questions and concerns. One member requested that the LHHS hear a presentation regarding the tobacco funds, the applications of the funds and whether the funds are in compliance with federal law requirements.

Another member talked about expanding the New Mexico attorney general's authority in pursuing Medicaid fraud.

A member stated that just because a person has health insurance does not mean that person has health care access. The percentage of University of New Mexico (UNM) graduates that stay to work in the state and attracting more college graduates to the state are issues that need addressing. What should be expected and requested from UNM? Lastly, this member stated that

the committee should consider creating a new category for dental health in addition to physical health, and pipeline issues for physical and dental areas should be addressed.

One member said the LHHS should look at mid-level provider gateways into the system.

Another member opined that telemedicine does not solve access issues even if it is greatly used in New Mexico because it merely takes up the slack from other neighboring states providing it. Providers should be persuaded to practice in this area via legislation, according to this member. Mid-level providers in telemedicine result in little or no cost to the state. Mr. Hely will provide more general language in lieu of some of those specifics provided in the work plan.

One member stated that private organizations graduate twice the number of nurse practitioners as public institutions. This member wanted to know why and what public institutions can learn from these private entities to increase the number of graduates from public schools.

Another member stated that Glenn Ford and other experts should provide the committee with information regarding disabilities concerns and what other states do generally. The member also suggested that the LHHS break into two subcommittees during one meeting so that more topics could be discussed, with each subcommittee then briefing the other members in the afternoon as to what was presented in the morning to each subcommittee.

One member expressed a desire to have the LHHS travel to Hobbs, as it has not done so for about seven years. The member also said that there is a need for comprehensive dental education programs in the state.

A member discussed the need for access to dental care and the lack of attention to the results of a 2010 study on the issue of creating a dental school.

A member stated that loan repayments on Medicaid and what will be covered under Medicaid should also be addressed. He remarked that the PPACA, or "Obamacare", does not include dental coverage except for children. The impact of water fluoridation — or the removal of fluoride from localities' water — should be studied with regard to the Medicaid budget.

A member stated that additional facts are needed on the abortion issues discussed earlier in the day.

Another member talked about Centennial Care for tribes and managed care registration.

One member stated that she would like an updated UNM report regarding the pipeline. UNM sends medical people out to rural areas, but there are caps and non-compete issues as well. An invitation to Hobbs for an LHHS committee meeting was extended to all the members by this member.

Another member talked about the PPACA and the big picture of evolving health care issues and what other states are doing. The member proposed discussing these issues over a working lunch during one of the committee's three-day meetings. This member stated that the state does not have enough doctors to handle the demand that the PPACA will create. Please refer to page 1 of Mr. Hely's handout on this issue.

One member stated that the state has 2,000 fewer doctors than it needs. This member said that the scope of practice as mentioned earlier should be discussed at a later meeting and questioned whether the committee should favor mid-level providers. Determining this would then lend guidance as to where to go next.

Another member expressed the need for compromise on these mid-level and dental assistant issues.

One member stated that every mid-level situation is different, and figuring out the rules for this issue would be important.

Another member talked about looking at Medicaid and tackling a long-term care program. In particular, this member was interested in any changes that have been made to this program. The member said that the committee should invite the Corrections Department to show that it is complying with procedures on laboratory work. These programs currently are being outsourced while New Mexico has the laboratory resources.

One member talked about adding a trip to Jemez to the schedule and waiving the September 30 deadline to stay in Santa Fe. An October meeting in Hobbs was discussed. A motion was made and passed by acclamation. The August meeting date will also be changed. The LCS requests that the July meeting stand as it is because it is only one month away and preparations have already been made for that meeting.

A motion was made to adopt the work plan with the additions suggested, provided that Mr. Hely be directed to work with the chairs to make changes to the work plan as requested. The motion passed by acclamation.

One member stated that this committee met four times a month during previous interims but is now meeting less frequently. He expressed concern about meeting only a few times as opposed to having more meetings, as in the past.

Another member stated that the LHHS should try to whittle down the number of topics the committee would discuss during the interim. Specifically, it would be very helpful if the LCS would electronically poll the members regarding the additions added to the work plan to focus on only the most germane issues for the upcoming legislative session.

One member suggested that the committee start its day earlier, at 8:30 a.m., so that it can have a fuller, more productive day.

A motion was made to prioritize those items on the work plan that are most important.

One member opined that the committee does not know what the governor will put in her special messages, and thus the importance of topics for the next legislative session — a short session in which germaneness is the deciding factor as to what may be heard — will not be known outside of the usual financial matters and vetoed bills.

Another member stated that the committee should spend its time on the germane matters and that the committee could anticipate this.

The motion to adopt the work plan along with the suggested additions passed by acclamation. It was left to the LHHS chair and LCS staff to whittle down the number of topics the committee would discuss during the 2013 interim.

### **Adjournment**

There being no further business, the committee adjourned at 5:30 p.m.